

STATE OF MICHIGAN
COURT OF APPEALS

VITEC, LLC,

Plaintiff-Appellant,

v

CHARLES A. YOUNG III, ANNA CALDERON,
YDL-SYNERGY, LLC, LEWIS D. DENNEN and
THEODORE B. LAWRENCE,

Defendants-Appellees,

ENGINEERING SOLUTIONS & SUPPORT,
INC.,

Defendant.

UNPUBLISHED
February 10, 2004

No. 243732
Wayne Circuit Court
LC No. 02-203749-CZ

Before: Owens, P.J., and Schuette and Borrello, JJ.

BORRELLO, J. (*concurring in part and dissenting in part*).

I concur with my brother judges' opinion to dismiss Dennen, but I would affirm the trial court's ruling as to the other defendants.

Plaintiff instituted this action to recover monies from defendants. As the majority correctly points out, plaintiff refused to attend his deposition on numerous occasions. It is incomprehensible why an individual would institute an action and then refuse to participate unless the only motive to undertake the lawsuit was to harass defendants. Plaintiff's refusal to comply with discovery not only prejudiced defendant Dennen, it prejudiced all defendants in this action.

The trial court gave plaintiff ample opportunities to cure his noncompliance. Plaintiff was threatened with sanctions and admonished, all to no avail. Thus, I would find no abuse of discretion by the trial court in dismissing this action against all defendants.

The majority states in its conclusion that "a lesser sanction would have better served justice . . .", but it does not direct the trial court to enter any such "lesser" sanctions. I would order the plaintiff to pay all costs and attorney fees related to this appeal as an appropriate sanction.

/s/ Stephen L. Borrello